IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 430 OF 2007.

Velgi Bhai S.Velani. ... Appellant.

Versus.

Smt.Naurangidevi Rajaram Sharma & ors.... Respondents.

Mrs.Preeti S.Shah i/by Mrs.Sheetal D.Mishra for the Appellant.

Shri Ram U.Singh for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 8th June, 2007.

P.C.:

1. The appeal is by the 4th Defendant. A Notice of Motion was taken out by the 4th Defendant under Rule 4 of Order XXXIX of the Code of Civil Procedure, 1908 for vacating the order of temporary injunction granted by the trial Court in favour of the 1st Respondent-Plaintiff. The ground on which the Appellant sought vacation of the interim relief was that the Appellant is not concerned with the development work and is not at all a necessary or proper party to the suit. The other ground is that the Advocate appearing for the Appellant could not remain present when the Notice of Motion for temporary injunction taken out by the 1st Respondent was heard by the trial Court.

2. After having heard the learned Advocates appearing for the parties, I find no merit in the Appeal. The leaned trial Judge has observed that the

Appellant has not filed his written statement till date taking up a stand that he is not concerned in any manner with the controversy involved in the suit. He has also noted that not even an affidavit was filed by the Appellant stating that he was not concerned with the work of development which is being carried out on the suit property. The learned Judge also observed that no proceedings were taken out by the Appellant for seeking relief of deletion of his name.

3. The grounds on which the Notice of Motion taken out by the Appellant is rejected are certainly relevant. Without taking any particular stand either by filing a written statement or by filing an affidavit, an attempt was made by the Appellant to get the order vacated. No fault can be found with the discretionary order passed by the trial Court.

4. The Advocate for the Appellant states that the Appellant is ready and willing to file written statement. After filing of the written statement, the Appellant can always take out appropriate application for deletion of his name as party Defendant. If such an application is made, the trial Court will decide the same in accordance with law.

5. Hence the following order is passed:

(i) The Appeal is dismissed with no order as to costs.

(ii) If written statement is filed by the Appellant within a period of four weeks from today, the same shall be accepted by the trial Court.

(iii) If the written statement is filed by the Appellant within the stipulated time, it will be open for the Appellant to take out appropriate application before the trial Court for deletion of his name as a party Defendant. If such an Application is made, the trial Court will decide the same expeditiously in accordance with law.

(iv) All contentions of the parties in the pending suit are expressly kept open.

Judge.